



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: J. Rosenberger Attorney Docket No.: WIMET121663
Application No.: 10/669,124 Art Unit: 2131 / Confirmation No: 2882
Filed: September 23, 2003 Examiner: C.A. Revak
Title: SYSTEM AND METHOD FOR WIRELESS LOCAL AREA NETWORK MONITORING AND INTRUSION

RESPONSE A

Seattle, Washington 98101

July 3, 2006

TO THE COMMISSIONER FOR PATENTS:

INTRODUCTORY COMMENTS

Please enter the accompanying Declaration Under Rule 1.131 of Joel Rosenberger, including Exhibit A, Declaration Under 37 C.F.R. § 1.131 of Michael O'Brien, and Declaration Under 37 C.F.R. 1.131 of Maria L. Čulić Anderson.

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CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
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REMARKS

Claims 1-66 remain pending in the application.

Reconsideration of this applicant is respectfully requested.

With regard to the 35 U.S.C. § 102(b) rejections based on U.S. Patent Application No. 2004/0003285 to Whelen et al. (hereinafter "Whelan"), applicant notes that the earliest priority date for Whelen appears to be its filing date, June 28, 2002. The present application claims the benefit of U.S. Provisional Patent Application No. 60/412,965, filed September 23, 2002, a difference of about 2 months, which priority claim is acknowledged in the Office Action. Thus, if, in fact, the claims are anticipated by Whelen (which applicant expressly denies) the Office Action should have rejected the pending claims under 35 U.S.C. § 102(e). (Applicant notes that the Office Action recites sections from 35 U.S.C. § 102(e) just prior to the rejections, which further suggests that the Examiner may have intended to make the rejections under § 102(e).)

As applicant believes that statutory basis of the rejection, irrespective of the merits, should have been 35 U.S.C. § 102(e), the enclosed declarations antedate Whelan and establish diligence from a date prior to June 28, 2002, up to the filing of the provisional patent application on September 23, 2002.

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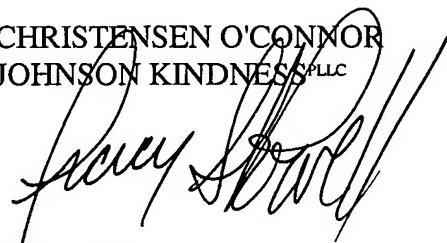
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It is believed that the application is in condition for allowance. If there are additional questions or comments regarding this application, applicant respectfully requests that the Examiner contact applicant's representative at the number listed below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS PLLC

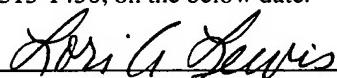


Tracy S. Powell
Registration No. 53,479
Direct Dial No. 206.695.1786

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date:

July 3, 2006



TSP:lal

Enclosures:

Rosenberger Declaration w/Exhibit A
Michael O'Brien Declaration
Maria L. Ćulic Anderson Declaration

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Applicant: Joel Rosenberger Attorney Docket No.: WIMET121663
Application No.: 10/669,124 Art Unit: 2131 / Confirmation No: 2882
Filed: September 23, 2003 Examiner: Revak, C. A.
Title: SYSTEM AND METHOD FOR WIRELESS LOCAL AREA NETWORK MONITORING AND INTRUSION DETECTION

DECLARATION UNDER RULE 1.131

Seattle, Washington 98101

June 17, 2006

TO THE COMMISSIONER FOR PATENTS:

I, Joel Rosenberger, declare as follows:

1. I am a citizen of the United States residing in Fall City, Washington, and am an inventor for the subject matter of the above-identified U.S. patent application.
2. I was employed by WiMetrics Corporation (WiMetrics) prior to June, 2002 until September, 2003. I am no longer employed by WiMetrics, and have no pecuniary interest in WiMetrics. Moreover, on September 23, 2003, the day that the above-identified patent application was filed, I assigned all my rights, title, and interest therein to WiMetrics.
3. In connection with my work for WiMetrics, prior to June, 2002, I conceived and developed a testable implementation of the subject matter of the above-identified patent application. Source code of this testable implementation was incorporated into a SourceSafe project, which project and source code files were checked into and stored in a SourceSafe database prior to June, 2002. A listing of the SourceSafe project (which identifies the source code files incorporated into the project) that predates June, 2002, is attached hereto as Exhibit A.
4. In further connection with my work for WiMetrics, prior to June, 2002, I prepared documents describing the subject matter of the above-identified patent application and submitted

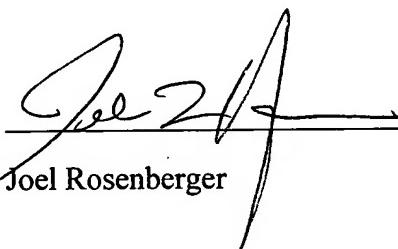
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them to attorneys at Christensen O'Connor Johnson Kindness, PLLC, for the purpose of obtaining patent protection on the subject matter. A redacted copy of these documents is provided as Exhibit B.

5. All statements made herein are true, and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the above-identified patent application or any patent that issues thereon.

Date:

6/17/06


Joel Rosenberger

TSP:tsp

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ssreport.txt

\$/Prototype

\$/Prototype/Database

emapdemo.mdb	6/17/02	11:36a
ems1.mdb	6/08/02	10:17p

\$/Prototype/Database Utility

database.cpp	4/04/02	4:57p
database.h	4/04/02	4:22p
dcon.cpp	4/04/02	4:07p
dcon.dsp	4/03/02	2:21p
StdAfx.cpp	4/01/02	5:22p
StdAfx.h	4/01/02	1:52p

\$/Prototype/eMap Bridge Service

\$/Prototype/eMap Bridge Service/Bridge (DEMO 1)

CLIENT.C	10/05/97	2:02a
client.dsp	2/23/02	12:18a
client.dsw	2/12/02	12:44p
DEVIOCTL.H	5/08/98	7:46a
EMS.C	2/26/02	4:21p
EMS.H	2/23/02	3:53p
FILTER.C	2/26/02	7:57p
MANAGE.C	2/26/02	7:54p
MANAGE.H	2/23/02	1:22a
Ntddndis.h	6/01/01	11:13p
Ntddpack.h	10/28/98	5:28p
Packet32.h	9/19/01	4:50p
SERVICE.C	10/05/97	2:02a
SERVICE.H	2/21/02	6:01p
win_Bpf.h	9/19/01	4:51p
win_bpf_filter.c	9/14/01	11:35a

ssreport.txt

\$/Prototype/eMap Bridge Service/Bridge (DEMO 3)

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emb.dsw	4/03/02	6:44p
emb.exe	4/26/02	2:27p
EMB.H	4/18/02	6:17p
FILTER.C	4/26/02	2:23p
FILTER.H	4/10/02	2:45p
MAKEFILE	4/09/02	6:47p
MANAGE.C	4/09/02	6:43p
MANAGE.H	4/09/02	6:43p
Ntddndis.h	6/02/01	12:13a
Ntddpack.h	10/28/98	6:28p
Packet.dll	2/20/02	5:50p
Packet32.h	9/19/01	5:50p
SERVICE.C	4/03/02	6:48p
SERVICE.H	4/18/02	6:17p
WIRELESS.txt	4/26/02	11:18a

\$/Prototype/eMap Bridge Service/Bridge (DEMO 4)

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emb.dsp	5/06/02	12:30p
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emb.exe	5/10/02	1:19p
EMB.H	5/03/02	1:25p
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FILTER.H	5/06/02	10:29a
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MANAGE.C	5/10/02	1:19p
MANAGE.H	5/06/02	10:39a

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Ntddpack.h	10/28/98	6:28p
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Packet32.h	9/19/01	5:50p
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SERVICE.H	5/06/02	12:12p
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CPQUtil.lib	11/12/01	3:03p
GetName.cpp	12/12/01	11:12a
GetName.h	12/12/01	11:12a
newres.h	12/10/01	9:24a
Ping.cpp	12/17/01	11:38a
ping.h	12/12/01	8:39a
Resource.h	12/20/01	9:09a
StdAfx.cpp	12/10/01	9:24a
StdAfx.h	12/17/01	10:37a
SystemStatus.cpp	12/10/01	9:24a
SystemStatus.h	12/10/01	9:24a
SystemStatus.rc	12/20/01	9:09a
SystemStatus.vcp	12/27/01	8:31a
SystemStatus.vcw	12/10/01	9:24a
SystemStatusDlg.cpp	12/27/01	8:29a
SystemStatusDlg.h	12/20/01	9:03a
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CellRenderer.java	5/06/02	10:19a
DBNode.java	3/20/02	4:47p
DeviceConnection.java	3/20/02	4:47p
devicedetail.JPG	3/21/02	4:05p
DeviceNode.java	6/10/02	9:23a
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STOP.JPG	3/22/02	9:44a
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TempDevice.java	12/16/01	5:50p
TempServer.java	12/16/01	6:05p

ssreport.txt

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\$/Prototype/eMap Control Server

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STUDIO\MYPROJECTS\EMC Ntddpack.h FILES\MICROSOFT V	Wayne	5/14/02	10:15a	C:\PROGRAM ISUAL
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ssreport.txt

STUDIO\MYPROJECTS\EMC

\$/Prototype/eMap Control Server/Request

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FILESL\MICROSOFT V ISUAL

STUDIO\MYPROJECTS\REQ
UEST

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reqmsg.h Wayne 6/19/02 2:57p C:\PROGRAM
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ssreport.txt

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ssreport.txt

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STUDIO\MYPROJECTS\INC				
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 \$/Prototype/Packet/Common Include				
DEVIOCTL.H		5/08/98	7:46a	
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Ntddpack.h	10/28/98 5:28p
Packet.lib	9/19/01 4:57p
Packet32.h	9/19/01 4:50p
win_Bpf.h	9/19/01 4:51p
win_bpf_filter.c	9/14/01 11:35a
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Packet.def	10/06/00 12:13p
Packet.dsp	7/05/00 12:07p
Packet.dsw	6/18/99 2:09p
Packet32.c	2/21/02 8:34a
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Openclos.c	9/18/01 11:49a
Packet.c	9/11/01 2:05p
Packet.h	9/18/01 12:15p
Read.c	9/19/01 4:12p
Write.c	8/27/01 11:39a
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Testapp.c	2/25/02 12:28p
TestApp.dsp	2/20/02 3:14p
TestApp.dsw	2/20/02 3:01p



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Joel Rosenberger Attorney Docket No.: WIMET121663
Application No.: 10/669,124 Art Unit: 2131 / Confirmation No: 2882
Filed: September 23, 2003 Examiner: Revak, C. A.
Title: SYSTEM AND METHOD FOR WIRELESS LOCAL AREA NETWORK MONITORING AND INTRUSION DETECTION

DECLARATION UNDER 37 C.F.R. § 1.131

Seattle, Washington 98101

June 2, 2006

TO THE COMMISSIONER FOR PATENTS:

I, Michael O'Brien, declare:

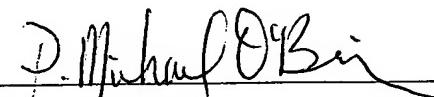
1. I am President and CEO of WiMetrics Corporation (WiMetrics), assignee of the above-identified U.S. patent application.
2. As a standard practice at WiMetrics, software source code developed for WiMetrics by its software developers is and has been maintained in a SourceSafe database. Source code stored in WiMetric's SourceSafe database is stored in conjunction with a SourceSafe project. This practice of storing source code in a SourceSafe database was begun prior to June, 2002, and continues to this date.
3. The subject matter of Exhibit A is a true and accurate listing of a SourceSafe project stored in WiMetric's SourceSafe database prior to June, 2002. Moreover, many of these source code files containing the subject matter of the above-identified patent application are in continued use today in products embodying the invention.
4. All statements made herein are true, and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful, false

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statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the above-identified patent application or any patent that issues thereon.

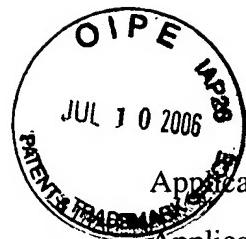
Date:

6/2/06


Michael O'Brien

TSP:tsp

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Applicant: Joel Rosenberger Attorney Docket No.: WIMET121663
Application No.: 10/669,124 Art Unit: 2131 / Confirmation No: 2882
Filed: September 23, 2003 Examiner: Revak, C.A.
Title: SYSTEM AND METHOD FOR WIRELESS LOCAL AREA NETWORK MONITORING AND INTRUSION DETECTION

DECLARATION UNDER 37 C.F.R. 1.131

Seattle, Washington 98101

July 3, 2006

TO THE COMMISSIONER FOR PATENTS:

I, Maria L. Ćulić Anderson, declare:

1. I am an attorney at Christensen O'Connor Johnson Kindness, PLLC, and have been employed there since prior to June, 2002.
2. Prior to June, 2002, our law firm was approached with regard to assisting WiMetrics Corporation (WiMetrics) in obtaining patent protection for inventions developed by WiMetrics.
3. Prior to June, 2002, I met with representatives from WiMetrics, including Joel Rosenberger, inventor of the subject for which WiMetrics was seeking patent protection. In the meeting that occurred prior to June, 2002, the WiMetrics representatives provided me with written materials that describe the subject matter of the present patent application. Information from these materials was used as the basis for opening a matter at Christensen O'Connor Johnson Kindness, PLLC, and, moreover, were placed and have been maintained in the corresponding file to this date. A true copy of these written materials describing the subject matter of the present patent application, which was provided to me prior to June, 2002, is attached as Exhibit B.

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4. All statements made herein are true, and all statements made on information and belief are believed to be true. These statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the above-identified patent application or any patent that issues thereon.

Date:

7/3/06

Maria L. Culic Anderson
Maria L. Culic Anderson

TSP:jl

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